

SCHOOL SAFETY/DISCIPLINE MANUAL

SECTION I: PROCEDURAL ISSUES

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I. PROCEDURAL ISSUES

A. POLICY DEVELOPMENT

Policy development is one of the local Board of Trustees' primary responsibilities. Idaho Code §33-506 empowers the Board of Trustees of each school district to "make by-laws, rules and regulations for its government and that of the district, consistent with the laws of the state of Idaho and the rules and regulations of the state board of education."

Specifically relative to student safety, the board has the power and duty "to protect the morals and health of the pupils" and "prescribe rules for the disciplining of unruly or insubordinate pupils."¹ Additionally, pursuant to statutory mandate,² the State Board of Education rule requires that each school district adopt, and review annually, a comprehensive district-wide policy and procedure encompassing the following:³

1. School Climate;
2. Discipline;
3. Student Health;
4. Violence Prevention;
5. Gun-Free Schools;
6. Substance Abuse-Tobacco, Alcohol, and Other Drugs;
7. Suicide Prevention;
8. Student Harassment;
9. Drug-Free School Zones; and
10. Building Safety including Evacuation Drills.

Generally, the above policies are not governed by statutory mandates insofar as the content is not set forth in state statute or the State Board of Education rules. The exceptions are the requirements relative to gun-free schools and drug-free school zones. Therefore, the substance of most of the policies is exclusively at the discretion of the local Board of Trustees.

Publication of Policies

In addition to adopting policies regarding student discipline, Idaho Code § 33-512(6) requires that the board summarize such rules "in writing at the beginning of each school year to the teachers and students in the district in a manner consistent with the student's age, grade and level of academic achievement." Most districts fulfill their obligation by publishing a student handbook, which sets forth the content of the relevant policies in a reader-friendly and age-appropriate manner. Essentially, unless the policy is understandable by the average elementary student, simply repeating the policies in the handbook is insufficient.

¹ Idaho Code §33-512

² Idaho Code §33-1612

³ IDAPA 08.02.03.160

On the other hand, any summarization of the actual policies in a student handbook must be comprehensive enough to actually put students and parents on notice as to the board's expectations. From a practical standpoint, it must be presumed that the student, and/or his/her parent interprets the summarization to, in fact, be the policy. Individual schools should retain documentation setting forth the dates on which handbooks are distributed to personnel and to students and their parents. Often, schools will require students and parents to sign a statement indicating that they have read the student handbook.

Considerations for Policy Development

When developing policies to regulate student behavior, the board of trustees and school officials should consider the following issues:

1. **Identify Legal Mandates.** Identify all federal and state mandates that may dictate the content of all or a portion of the policy. Also, identify relevant district policies and other contractual obligations (e.g., Master Agreement) that may have impact on the issue.
2. **Identify Local Concerns.** Identify specific local concerns that the policy is intended to address. For example, in some school districts, gang membership is a significant issue while it may be virtually non-existent in other districts.
3. **Broad Application.** Avoid adopting policies solely to address a bad fact pattern. A policy may be proposed in response to a particularly heinous event. However, policies should have a universal application. They become meaningless to regulate student conduct when they are too narrowly drafted.
4. **Avoid “zero tolerance” policies.** “Zero tolerance” policies were in vogue several years ago, particularly relative to possession of weapons as well as drug and alcohol use. Essentially, the policies stated that the board had “zero tolerance” for the specified conduct and expelled students found in violation thereof, without consideration for the individual circumstances.

Unfortunately, while “zero tolerance” is an appealing concept, the implementation of such policies in particular situations may result in absurd conclusions. One example is a kindergartner being expelled for kissing a classmate in violation of a “zero tolerance” sexual harassment policy.

Several courts have held that students who brought weapons to school, in direct violation of a zero tolerance policy, cannot be suspended or expelled unless the board considers the factual scenario, including the student's intent and any extenuating circumstances. In *Seal v. Morgan*,⁴ the Sixth Circuit Court of Appeals stated:

We would not for a minute minimize the Board's obligation to maintain the safety of its campuses, and its right to mete out appropriate discipline (including expulsion) to students who commit serious violations of its rules.

⁴ 229 F.3d 567 (6th Cir. 2000).

We understand that the decision not to expel a potentially dangerous student also carries very serious potential consequences for other students and teachers. Nevertheless, the Board may not absolve itself of its obligation, legal and moral, to determine whether students intentionally committed the acts for which their expulsions are sought by hiding behind a Zero Tolerance Policy that purports to make the student's knowledge a non-issue.⁵

Additionally, the No Child Left Behind Act (NCLB), signed by President Bush in January, 2002, contemplates review of the individual circumstances, consistent with the holding in *Seal*. NCLB states at §4141:

Each state receiving Federal funds under any title of this Act shall have in effect a State law requiring local education agencies to expel from school for a period of not less than 1 year a student who is determined to have brought a firearm to as school, or to have possessed a firearm at a school, under the jurisdiction of local educational agencies in that State, *except that such State law shall allow the chief administering officer of a local educational agency to modify such expulsion requirement for a student on a case-by case basis if such modification is in writing.* (Emphasis added.)

Similarly, Idaho Code §33-205 provides that the board may modify a weapons expulsion on a case-by-case basis:

Provided however, the board shall expel from school for a period of not less than one (1) year, twelve (12) calendar months, or may deny enrollment to, a student who had been found to have carried a weapon or firearm on school property in this state or any other state, except that the board may modify the expulsion or denial of enrollment order on a case-by-case basis.

5. **Specify Prohibited Behavior(s).** Specify the prohibited behavior in the policy. It is not sufficient to simply state that selling controlled substances is illegal or bullying is harmful to students. The policy must outline the specific expectations relative to student behavior (e.g., "Students are prohibited from possessing controlled substances on school property or at school sponsored activities.").
6. **Definitions.** Define the policy's terminology, particularly if it is a legal term or a term of art. For example, a policy prohibiting "bullying," or possession of "weapons" is unenforceable if the policy does not define the terms "bullying" and "weapons."
7. **Publication.** Publish the policies. Students and parents should know the parameters of behaviors. Take reasonable steps to ensure that all students know what policies are applicable. For example, if the policy is not written at a middle school level, summarize it in an age-appropriate manner.

⁵ *Seal v. Morgan*, 229 F.3d 567 (6th Cir. 2000).

8. **Training.** Train staff and students regarding the content of the relevant policies. Students should be fully aware of all behavioral expectations. Staff should be aware of all relevant policies, understand them, and intervene when they witness inappropriate behavior.
9. **Implementation.** Apply policies even-handedly. All students in similar situations should be dealt with in a similar fashion.
10. **Annual Review.** Review policies annually to ascertain whether they should be modified due to changes in the law and/or problems in implementation.

B. INVESTIGATION OF STUDENT MISCONDUCT

Regardless of the nature of the student's misconduct, school officials have an obligation to investigate the allegations to determine whether they occurred, and then take appropriate action. On its most basic level, the investigation may simply involve questioning the alleged perpetrator. On the other extreme, school officials may need to take witness statements, conduct searches, and make determinations of credibility when conflicting statements are received. Of course, once the investigation is complete, a school official with authority to discipline the student must take appropriate action.

Selecting an Investigator

Generally, a building or district level administrator may handle the investigation internally. However, due to the nature of the allegations, a law enforcement officer or an independent third party should conduct some investigations.

If the district has reason to believe that the allegation may involve criminal activity, and the accused denies the allegations, the local law enforcement agency should be contacted before the investigation is commenced. Allegations of selling controlled substances and possession of weapons are examples of incidents that may be appropriately referred to law enforcement for investigation. Simply stated, school officials should generally not investigate allegations, that may result in criminal charges. Missteps during the investigative process may compromise the criminal charges, or at a minimum, taint law enforcement's investigation.

For purposes of disciplining a student who engaged in criminal conduct, the school district may rely on law enforcement's report. However, school officials should recognize that the criminal standard is a higher standard "probable cause" than the standard used in determining whether a violation of district policy occurred. Additionally, school officials should conduct any follow-up investigations as deemed appropriate.

The district may also determine that the allegations should be handled by someone other than an employee, particularly in situations involving harassment or bullying complaints where the fact pattern is complex and the district does not have the resources to thoroughly investigate such allegations in a timely manner. Additionally, if the school district is concerned that allegations of bias may arise due to the relationship between students and administration, an independent investigator would be appropriate.

Interviewing Students

When students need to be interviewed as part of an investigation, the school official should take reasonable steps to ensure that all involved students are given the same opportunity to give “their story.” Often, special considerations need to be given to students who are actually the victim, particularly in a harassment or bullying situation. Additionally, care should be given to young students who may be upset or confused by the process.

- Interview all students who are parties to an incident as soon as possible, whether as the victim, perpetrator, or as a witness.
- Interview students individually to decrease the possibility that they will be influenced by other students.
- Ask the student(s):
 - When did it occur?
 - Where did it occur?
 - Who was present?
 - Who was involved?
 - How did it happen?
- Require that the student give you a written statement. The statement must be signed and dated by the student. The statement should be reviewed by the student and investigator.
- Ask the student to clarify; often, students will not identify individuals by name, instead using “he” or “she” rather than the student’s name.

Sample Forms: Conducting an Investigation, Section I. Procedural Issues, Pages 18-24
Record of Complaint, Section I. Procedural Issues, Pages 25-26

C. SEARCH AND SEIZURE

The Fourth Amendment of the U. S. Constitution guarantees the rights of individuals against “unreasonable searches and seizures.” The U.S. Supreme Court, in *New Jersey v. T.L.O.*,⁶ defined “search” of students to be any policy action that intrudes upon and invades a student’s justifiable expectation of privacy. *T.L.O.* also established the test for reviewing student searches. Did reasonable grounds exist for suspecting that the search would turn up evidence that the student had violated or was violating either the law or school rules? If so, was the search reasonably related in scope to the circumstances justifying the search?

As a result of the ruling in *T.L.O.*, it is clearly established that, when searching students, school officials have a lower standard to meet than law enforcement. Law enforcement officers are held to a probable cause standard, requiring that the belief be supported by more evidence for than against it.

School officials may search a student if there exists a reasonable suspicion that the student has committed an offense and that the search will result in information. It is not necessary that the search actually prove that the student violated school policy or the law. Rather the search is legitimate if it is likely to produce evidence as to whether the student committed the violation and/or possesses relevant evidence. Further, the search must be reasonable at inception.

⁶ 469 U.S. 325, 105 S. Ct. 733 (1985).

Some school districts are interested in utilizing “drug dogs.” Drug dogs are trained to detect contraband (e.g., drugs and weapons) by sniffing parking lots, lockers, and personal belongings to determine whether reasonable cause exists for a search. While handled by its trainer, the dog may respond (“alert”) to a particular item or location, establishing reasonable suspicion and serving as a basis for the school officials to conduct a search.

Search of an Individual Student

Searching an individual student is the most invasive search in which school officials may engage. Generally, teachers do not have the authority, and should never attempt, to search a student or his/her personal items. Rather, only school officials with the authority to enforce disciplinary policies, and/or designees, should conduct the searches. Also, please note that if an SRO conducts the search, he/she must meet the probable cause standard discussed above.

Even when a student is suspected of violating district policy, he/she is entitled to a reasonable level of privacy.

- A search of an individual student should always be conducted in a non-public setting.
- An appropriate staff member should personally escort the student(s) to the office. The student(s) should not be left alone as he/she may attempt to dispose of contraband items.
- Before beginning a search, the school official should ask the student if he/she is in possession of anything that violates school policy, is considered contraband or violates the law. The school official should tell the student what he/she is searching for and the parameters of the search and give the student an opportunity to produce the items. In doing so, the school official may meet the goal without actually initiating a search.
- If the student does not produce the item, the school official should ask the student whether or not he/she will consent to the search. The school official may conduct the search without consent if he/she has reasonable suspicion that the individual student has violated school policy. *See* the section entitled Search of Personal Items set forth below.
- School officials should never attempt a “strip search.” Students may be asked to remove heavy coats and outdoor wear (e.g., sweatshirts and boots). Students may be asked to remove items from their pockets. The actual search of a student should be no more invasive than a “pat-down” search. School officials should never ask students to remove clothing incident to a search. If the school official doesn’t think he/she will find the item in a pat-down search and the issue is vital, turn the matter over to law enforcement officers and they can determine whether they need to search the student.
- Always have an adult witness to the search. School officials should ensure the student’s rights and consider having a staff member who is the same sex as the student conduct the search.
- Secure and inventory items seized as a result of the search.
- Notify the parents of the fact that a search was conducted.

Search of Personal Items

School officials may search backpacks, purses, and other personal items that a student has in his/her possession, based on a reasonable suspicion that the student may possess contraband or evidence of a violation of district policy. The key to such searches is that it should be reasonable. As with other searches, the student should be present during the search, informed of the suspicions,

and given an opportunity to voluntarily relinquish the item(s). Further, the student should be asked to consent to the search.

Relative to the scope of the search, the school official must act reasonably. For example, if the suspected contraband is a relatively large item such as a bong, the search should not be extended to a coin purse.

Search of Lockers

Most school policies establish that the locker is school district property and, as such, the district retains the right to search any locker at any time. Students should be informed that the locker is school district property, that school officials may search the locker at any time, and that the student does not have a reasonable expectation of privacy for the contents of the locker.

Authorized school officials may randomly open and inspect lockers for any reason at any time. If the random search produces evidence of criminal activity or violation of district policy, it may serve as a basis for a reasonable suspicion search of the locker's contents, including the student's property.

Also, if there is reasonable suspicion that a locker may contain illegal or contraband materials, other evidence of a crime or violation of district policy, or items that may be a threat to safety or security, school officials may open and inspect the locker. Searches of lockers, whether random or based on reasonable suspicion, may be conducted without notice, without consent, and without a search warrant.

Search of Student Vehicles

Authorized school officials may conduct routine patrols of school parking lots, inspecting the exteriors of vehicles parked on school property. Such vehicle's interior may be searched whenever the school official has reasonable suspicion to believe that illegal or contraband materials, other evidence of a crime or violation of district policy, or items that may be a threat to safety or security, are contained inside. Such patrols and searches may be conducted without notice, without consent, and without a search warrant.

D. GENERAL DISCIPLINARY PROCEDURES

Idaho Code §33-205 governs the disciplinary actions, including suspension, expulsion, and denial of enrollment.

The board of trustees may deny enrollment, or may deny attendance at any of its schools by expulsion, to any pupil who is an habitual truant, or who is incorrigible, or whose conduct, in the judgment of the board, is such as to be continuously disruptive of school discipline, or of the instructional effectiveness of the school, or whose presence in a public school is detrimental to the health and safety of other pupils, or who has been expelled from another school district in this state or any other state.

Rights of the School Board

As set forth in Idaho Code §33-205, the school board has fairly broad authority relative to denying students the right to attend school. Essentially, the statute allows the board to consider the following situations:

- **Habitual Truant.** The student repeatedly violates the attendance policy, and his/her absence is unexcused.⁷
- **Incorrigible.** Defined as “unruly; not reform able.”⁸
- **Continuously Disruptive.** In this instance, the board must find that the student is disruptive, continuously, of school discipline or instructional effectiveness. The student usually has a lengthy disciplinary record, even if the individual incidents are not severe misconduct.
- **Detrimental to Health and Safety.** Allows school boards to expel students who may pose a health or safety threat to other students, but may be based on one-time event; no requirement that the student has continually acted out.
- **Expelled from Other School.** The basis for the expulsion and the location of the other school are irrelevant. Processed as a denial of enrollment or expulsion if admitted without school officials having knowledge of expulsion.

Discretion of the Board

The board has the discretion to impose the discipline as proposed by the school official, reject the proposal and return the student to school, or modify the recommended discipline. Even in cases of possessing a firearm or weapon, the board may modify the expulsion or denial of enrollment on a case by case basis, as federal and state law allow the mandated 12 month expulsion to be modified on a case-by-case basis.

The board may order a student expelled for a specific period of time and suspend the expulsion upon compliance with specific conditions. Such decisions may be appropriate when the board determines that the student is not a safety risk to the other students and yet needs some structure as a condition for returning to school. For example, the board could order community service hours, evaluation and counseling, and maintaining passing grades to be included in a behavior contract, which must be signed by the student and his/her parents as a condition for the suspension of the expulsion order

Due Process

Students are entitled to procedural due process prior to any disciplinary action being imposed by the school district. Generally, due process involves a “prudent person” standard insofar as the due process procedures are reviewed on the basis of whether a reasonable person would believe them to be reasonable in the circumstances. When a student is being suspended, or some lesser

⁷ Idaho Code §33-206.

⁸ Webster’s Collegiate Dictionary, Tenth Edition, p 589.

discipline is imposed, the student is entitled to “rudimentary” due process. In the event the student may be expelled, the due process is formal in nature.

Rudimentary Due Process

Pursuant to the Fourteenth Amendment of the U.S. Constitution, students who have allegedly violated a policy and are subject to disciplinary action are entitled to due process. In the event the contemplated discipline is suspension or some lesser penalty, the student is entitled to “rudimentary” due process, which involves oral or written notice of the charges against the student and a fair opportunity to be heard. “Rudimentary” due process is informal and typically occurs directly after the misconduct. Generally, the principal or other authorized school official meets with the student, informs him of the allegations and, literally, asks the student to respond with his story of the events. Based on that interview, and any other information the school official may have, a determination as to whether or not to suspend the student is made.

Formal Due Process

In more serious matters, the student may have the right to a formal due process hearing, as set forth in Idaho Code §33-205. Such a hearing is before the board. The student is specifically entitled to the following due process rights:

- Written Notice to the parent or guardian of the student, stating:
 - The grounds for the proposed expulsion or denial or enrollment;
 - Time and place where such parent or guardian may appear to contest the action of the board;
 - The right of the student to be represented at the hearing by an attorney;
 - The right to produce witnesses and submit evidence on his or her own behalf; and
 - The right to cross-examine any adult witnesses who may appear against him or her. The student does not have the right to cross-examine other students.

Such notice must be delivered to the parent by a means or in a manner reasonably calculated to provide actual notice to the person. Generally, the notice is personally delivered to the parent or guardian or is sent by regular mail. Certified mail may also be used as it provides verification as to whom and when the delivery occurred. If the notice is sent by certified mail, it should also be sent by regular mail as some individuals will refuse to accept a certified or registered letter.

- Full and fair hearing on the proposed expulsion or denial of enrollment. The hearing must provide the student a meaningful opportunity to respond to the allegations. Such opportunity must be reasonable in the circumstances, given the age and development of the student involved and the seriousness of the allegations.

Provide a reasonable time period between the notice and the holding of the hearing to allow the student and his/her parents to prepare their response. A reasonable time period means sufficient time to allow for preparation of the student’s evidence and for the student and parents/guardian to

be present. Typically this is five to seven calendar days. In certain circumstances a shorter period of time may be reasonable. In conducting an expulsion hearing, the board may elect to hire a hearing officer to conduct the hearing, assist with the board's deliberations, and write the order. A hearing officer is particularly helpful when an attorney represents the student and/or the substantive or procedural issues are complex.

E. CHECKLIST FOR SHORT TERM SUSPENSIONS AND MINOR DISCIPLINE

- **Knowledge of Behavior Expectations.** Be familiar with, and follow, applicable law, district policy, and necessary procedures regarding the suspension of students or the imposition of other minor disciplinary measures.
- **Special Education.** If the student is disabled, comply with any special procedures applicable to disciplining students with disabilities.
- **Investigate and Evaluate Appropriate Discipline.** Conduct an investigation of the allegations. Determine whether the alleged misconduct is a proper basis for the proposed disciplinary action.
- **Rudimentary Due Process.** Provide the student with oral or written notice of the specific misconduct of which he or she is accused and the proposed disciplinary measure. If the student denies the alleged misconduct, provide an explanation of the evidence the school has against him or her. Allow the student an opportunity to present his/her side of the story. Impose the proposed disciplinary measure unless the student adequately refutes the misconduct of which he/she is accused.
- **Dangerous Student.** If the student's presence endangers persons or property or threatens disruption to the educational process, immediately remove the student from school, even without rudimentary due process, but provide notice and a hearing as soon as practicable thereafter.
- **Notice.** Notify the student's parent/guardian in writing of the disciplinary measure taken with either personal delivery or regular mailing. The school district may send the notice by certified mail to obtain confirmation that the parent received the notice. Additionally, email may be used if this is a normal means of communication with the parent/guardian. A printed copy of the notification should be placed in the student's education record.
- **Extended Suspension.** In the event a suspension for more than five (5) days will be imposed, the superintendent must also provide the rudimentary due process discussed above before extending the suspension period.

F. CHECKLIST FOR EXPULSIONS

- **Knowledge of Behavior Expectations.** Be familiar with, and follow, applicable law, district policy, and necessary procedures regarding the expulsion procedures for students.

- **Special Education.** If the student is disabled, comply with all special procedures applicable to disciplining students with disabilities.
- **Investigate and Evaluate Appropriate Discipline.** Investigate the alleged misconduct. Determine whether the alleged misconduct is a proper basis for the proposed disciplinary action.
- **Due Process Hearing.** If grounds exist for the proposed disciplinary action, initiate charges consistent with school board policy and Idaho Code provisions. Provide written notification, personally delivered to parents/guardians or sent by regular mail, regarding the expulsion hearing and rights of the student. The school district may send the notice by certified mail to obtain confirmation that the parent received the notice.

The hearing process must be followed: a student must be provided “an opportunity to be heard ‘at a meaningful time and in a meaningful manner’” (“meaningful” time and manner means consistent with the seriousness of the behavior alleged and the age and development of the student): school personnel have no obligation to present a defense or mitigating circumstances on behalf of the student; during the hearing process, the board members may ask questions of both parties to fully clarify the issues before them.

- **Dangerous Student.** If the student’s presence endangers persons or property or threatens disruption to the educational process, immediately remove the student from school, even without rudimentary due process, but provide notice and a hearing as soon as practicable thereafter.
- **Suspension.** If circumstances warrant, suspend the student pending the hearing, after providing rudimentary due process and staying within the statutory number of suspension days.
- **Disqualification of Board Member.** Any board member must disqualify him/herself from acting as a decision-maker if he/she will testify in the proceedings, has participated in bringing or investigating the charges made, has sufficient specific knowledge of the evidence as to have biased his/her fairness, was the object of the misconduct giving rise to the charges, or is otherwise not impartial.
- **Hearing Officer.** A board can appoint a hearing officer to serve as the trier of fact and make recommendations to the board regarding the disciplinary measure to be imposed.
- **Waiver by Student.** The right to a formal hearing may be relinquished, abandoned or waived. Waiver would be by a written statement signed by the parent/guardian or by the student if age 18 or older. Waiver may also be requested in person at the time of the hearing before the school board by the parent/ guardian or the student if age 18 or older. However, if no waiver is received, and the student does not appear for the hearing, the administration must provide evidence to the board regarding the alleged actions sufficient for the board to make a determination as to the allegations and the seriousness of the alleged behaviors.

- **Board's Decision.** Board deliberations should follow the hearing process. Only members of the board and, if applicable, its attorney or hearing officer, may participate in or attend the deliberations. A notice of the board's decision should be provided to both parties, and the decision should be reduced to writing and placed in the student's education record.
- **Reporting.** If the student is of compulsory school age 7 to 16, an authorized representative of the board shall, within five (5) days, give written notice of the student's expulsion to the prosecuting attorney of the county of the student's residence.
- **Appeal Rights.** The Idaho Supreme Court has held that the board has the discretion to determine when an expulsion is appropriate, and a student has no right to appeal the school board's imposition of an expulsion.
- **Disciplinary Records.** Student educational records include documentation of disciplinary incidents and decisions. These records are required by both federal and state law to be transferred with other educational records when a student enrolls in another school district.⁹

G. LAW ENFORCEMENT

The Juvenile Corrections Act¹⁰ authorizes a law enforcement officer to take a juvenile into custody without a court order when the officer has reasonable cause to believe that the juvenile has committed a misdemeanor or felony if the acts had been committed as an adult, has violated a law in the presence of a police officer or private citizen, or there are reasonable grounds to believe the juvenile has committed a status offense.

"Take into custody" may involve the law enforcement officer controlling or limiting the student's movement, or actually transporting the student to another location. Further, as there are no statutory restrictions regarding the location from which a juvenile may be taken into custody, a law enforcement officer may question a student during school hours, and/or take a student into custody while he is attending school.¹¹ The school administration has no legal obligation to notify the parents of the actions of law enforcement. Prior to making such notification, school officials should talk with law enforcement to assure that their actions are not in conflict with the actions of law enforcement.

School Resource Officers

School Resource Officers (SROs) are law enforcement officers even if they are stationed in the school full time. They are required to comply with all statutes, state and federal, that apply to law enforcement and must meet the standard of probable cause when conducting a valid search in a school setting. SROs are also obligated to fulfill the terms of any agreement that exists between the employing law enforcement agency and the school district.¹²

⁹ Idaho Code § 33-209 and NCLB §4155.

¹⁰ Idaho Code §20-516.

¹¹ Attorney General Opinion No. 93-2.

¹² More information is available regarding the role of SROs while in the school setting in *Idaho School Search Resource Guide*, Idaho Department of Education, School Climate/Discipline Program, August 2002, pp. 9-11.

It should also be noted that SROs maintain records regarding their contacts with students. Under the provisions of the Family Educational Records and Privacy Act (FERPA) those records are law enforcement records and not under constraints of FERPA regarding access and confidentiality¹³, but may be subject to law enforcement agency policy.

Executing an Arrest Warrant

Although rare, law enforcement officers may enter school property for the express purpose of arresting a particular student, pursuant to an arrest warrant. Law enforcement officers have authority to arrest a juvenile or adult on criminal charges pursuant to an arrest warrant, at any time and location. As a result, if a law enforcement officer enters a school for such purpose, school officials have no authority to deny access to the student.

To decrease the potential disruption an arrest may cause at the school, school officials should develop a relationship with local law enforcement agencies to facilitate discussion of how such incidents can be handled to meet the needs of law enforcement while protecting the integrity of the educational process. Issues which should be addressed include:

- Whether the arrest can occur somewhere other than the school.
- If not, can the arrest occur in such a manner that the student is not cuffed in front of other students?
- What advance notice can the school officials receive relative to the arrest?
- What cooperation by school officials is necessary?
- Is it possible to bring the student to an administrative office as opposed to entering the classroom to arrest the student?
- Who will contact the student's parents?

Law Enforcement Investigations

Law enforcement officers may seek to interview students, regarding criminal conduct, in the school setting. An issue which often arises is whether school officials have the right to call the students' parents to inform them that law enforcement has requested to speak with their child, seek consent, and/or request their presence during the interview. A related issue is whether school officials have a right to demand to be present during the interview as "*in loco parenti*."

Historically, Idaho school personnel routinely called parents when a law enforcement officer requested to speak with their child. Such an approach came under scrutiny in 1993, when Attorney General Opinion No. 93-2 was issued, specifically pertaining to the Department of Health and Welfare's authority, while investigating child protection cases, to interview students in the school setting. On a broader note, that opinion acknowledged a law enforcement officer's authority to interview students in the school setting, stating, "the scope of the Idaho Department of Health and Welfare's authority is not limited by statute and extends into all public and private facilities, including school facilities, just as law enforcement's authority is not limited when investigating crimes committed by youth."

¹³ 34 C.F.R. §§99.8(b)(1) and 99.30.

Additionally, the Attorney General Opinion recognized the dangers of an improperly conducted investigation. “The dangers of not conducting a proper investigation are obvious. The presence of school officials could hinder the investigation itself, involve a potentially intimidating authority figure, and taint potential evidence for future court proceedings.” The opinion concluded, “[t]he determination of who should be present during the course of a child abuse investigation is solely within the discretion of the Department of Health and Welfare and law enforcement.” School officials may offer an opinion on the matter, but all final determinations are the responsibility of the Department of Health and Welfare and/or law enforcement. This same provision applies to all investigations conducted by law enforcement, based on the expertise of law enforcement officers and the need to ensure the investigation is not tainted.

If the school official and the law enforcement officer are at odds as to the interview and the law enforcement officer determines that the school official is impeding the criminal investigation, the school official may face criminal charges:¹⁴

Every person who willfully resists, delays or obstructs any public officer, in the discharge, or attempt to discharge, of any duty of his office or who knowingly gives a false report to any peace officer, when no other punishment is prescribed, is punishable by a fine not exceeding one thousand dollars (\$1,000), and imprisonment in the county jail not exceeding one (1) year.

The criminal charges for resisting and obstructing law enforcement officers requires “willful” or intentional actions on the part of the school official. Therefore, school officials must ensure that, by their actions, they in no way willfully resist, delay, or obstruct the actions of a police officer, while ensuring the safety of the students in the school’s care, as well as ensuring that the educational process is not disrupted to any great extent.

Non-compliance by school personnel with the requests of law enforcement may also result in added disruption of the education process and draw negative attention to an individual student. School personnel who “sit in” on law enforcement interviews with students may well become witnesses in any ensuing court proceedings, a role which is clearly not contemplated.

Further, school officials would need to determine, in consultation with legal counsel, whether information heard in the law enforcement interview was confidential, could be used in educational decision-making, or refers to the student’s educational record.

Health and Welfare Investigations

When Idaho Department of Health and Welfare Child Protection Services (Department) employees are investigating allegations of child abuse, neglect or abandonment, they are acting in a law enforcement capacity.

Occasionally, Department investigators in child protection cases seek to interview students at school. School officials may feel protective of the student(s) and be reluctant to allow such an interview without the parents being called, and/or insist that a school official be present, particularly if the student is young or appears upset. However, Department investigators generally

¹⁴ Idaho Code §18-705.

want to interview the child in the school setting specifically because they are concerned that the parent/guardian(s) may attempt to hinder or otherwise taint the interview process.

The issue of Department employees interviewing student(s) in the school setting was specifically addressed in Idaho Attorney General Opinion No. 93-2, which opined, at least in child protection cases, where a potential victim is being interviewed, that the parents have no right to consent to, or receive notice of, such an interview.

The very nature of a child abuse investigation and the fact that parents cannot invoke a legal privilege to prevent a child from testifying against them in Child Protective Act cases negates the requirement for parental consent or notification prior to interviewing the child. The responsibility for notifying parents is that of the Department of Health and Welfare and is not required until such time as the department deems it necessary to ensure the best interest and needs of the child are met.

Therefore, school officials have no right to deny Department investigators' requests to interview student-victims at school when they are investigating allegations pursuant to the Child Protective Act. Likewise, school officials do not have the right to require that Department investigators provide proof of parental consent or notice, relative to the interview. Further, school officials have no right to contact the parents and/or insist that a school official be present during the interview.

Interagency Agreements

Given the myriad of issues surrounding law enforcement interviews in the school setting, the school district should establish a protocol for all administrators to follow. Otherwise, the individual school official is responding to a specific situation, which may be emotionally charged.

School districts and local law enforcement agencies should jointly determine the protocol, via an interagency agreement or written procedure approved by both entities, to be used when law enforcement will interview students in the school setting.¹⁵ The protocol should outline the role of all parties and the standard practice for interviewing students, as well as addressing how an emergency situation will be handled.

In developing an interagency agreement, the school district and law enforcement should address the following issues:¹⁶

- When is it appropriate for law enforcement to enter the school to interview or arrest a student? Absent compelling circumstances, investigations relative to incidents unrelated to school should not be conducted at school during school hours.
- Would law enforcement be willing to conduct its interviews during non-school hours, except in compelling circumstances? If so, what is the nature of the relevant circumstances?

¹⁵ In discussions to establish a protocol, it is important to include legal counsel for law enforcement as well as their organizational leader and a representative of the county prosecutor's office.

¹⁶ This list is not intended to be all-inclusive; other issues may be present that should also be included in a protocol between law enforcement and the school district.

- What information will law enforcement provide school personnel regarding the need and reasons for interviewing a particular student in the school setting?
- When is it appropriate to contact the parents of the student? Who should initiate that contact?
- If parents are contacted and request to be present for the interview, how will law enforcement respond? Will they delay the interview until the parents arrive?
- When is it appropriate for school personnel to sit in on an interview between law enforcement and the student?
- If school personnel are part of an interview process, what is their role? Should they simply be observers, without speaking or commenting during the interview, or active participants?
- What is the nature of the information that the school personnel may be privy to in the course of the interview (e.g., confidential)?
- How can school personnel ensure that the educational process is not disrupted to any large degree by the presence of law enforcement officers and/or the ongoing investigation?
- How does the nature of the crime being investigated (child protection, a crime against a child, a crime against property, a crime against a person, a crime in which it is believed a student is a perpetrator, etc.) impact the protocol?
- How will arrest warrants be handled? What procedures can be agreed upon to decrease the disruption of arresting the student in front of other students?

H. TRANSFER OF STUDENT RECORDS/DUTIES

Section 33-209 – Idaho Code. “Whenever a student transfers from one (1) school to another, within the district, within the state, or elsewhere, and the sending school is requested to forward student records, the sending school shall respond by forwarding a certified copy of the transferred student's record within ten (10) days, except as provided in section 18-4511, Idaho Code. When the school record contains information concerning violent or disruptive behavior or disciplinary action involving the student, this information shall be included in the transfer of records but shall be contained in a sealed envelope, marked to indicate the confidential nature of the contents, and addressed to the principal or other administrative officer of the school.”

The parent or guardian of a student transferring from out-of-state to a school within the state of Idaho is required, if requested, to furnish the Idaho school accurate copies of the student's school records, including records containing information concerning violent or disruptive behavior or disciplinary action involving the student. This information must be contained in a sealed envelope, marked to indicate the confidential nature of the contents, and addressed to the principal or other administrative officer of the school. Failure of the parent or guardian to furnish the required records, or failure to request the administration of the previous school to provide the required records, constitutes adequate grounds to deny enrollment to the transferring student or to suspend or expel the student if already enrolled.

I. SCHOOL DISTRICT RESPONSIBILITIES FOR RETENTION OF REPORTS OF INVESTIGATION OF ALLEGATIONS OF WRONGDOING REGARDING STUDENTS

The Family Educational Rights and Privacy Act (FERPA) applies to investigation reports regarding allegations of wrongdoing that involve a student as the alleged wrongdoer or as the alleged victim. An investigation report constitutes an education record of a student, to the extent it is directly related to a student and maintained by the school district. The Office for Civil Rights (OCR) within the U.S. Department of Education has addressed the issues of retention and access to investigative records, including the “interrelationship” between Title IX and FERPA requirements. The direction of OCR is contained in the publication, *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Student, or Third Parties, Title IX*, dated January 2001.

OCR’s publication states that information regarding the allegations, investigation, and outcome is part of the alleged wrongdoing student’s educational record. Title IX requires that the alleged victim be informed of the results of the investigation, including whether the outcome involved counseling, discipline, or other sanctions of the wrongdoer. This information is to assure the alleged victim that the allegations were taken seriously by the school district and that actions were taken to eliminate the hostile environment and to prevent further wrongdoing from occurring. OCR advises that it is not a conflict with FERPA to provide this necessary information to the alleged victim and the alleged victim’s parent or guardian. Any additional disclosures must be consistent with the mandates of FERPA, which generally require the consent of the student’s parent or guardian for disclosure, or a valid court order, including subpoenas.

A copy of the investigation report should be made a part of the alleged wrongdoing student’s educational record and access to the information should be consistent with FERPA. This portion of the record may be kept with the disciplinary records of the student, which are required to be transferred to a new school along with the remainder of the student’s educational record if the student transfers.

J. SAMPLE POLICIES

Searches by School Officials, Policy No. 542

Student Suspension, Policy No. 543

Student Expulsion/Denial of Enrollment, Policy No. 544

Disciplining Student With Disabilities (IDEA), Policy No. 545

Disciplining Students With Disabilities (504), Policy No. 546

Corporal Punishment, Policy No. 547

Conducting an Investigation¹⁷

_____ School District

I. Of first concern

- ☐ Begin the investigation as soon as possible.
 - ☐ Date written/oral complaint was received: _____
 - ☐ Date investigation began: _____
 - ☐ Complaint received from: _____
 - ☐ Complaint received by: _____
 - ☐ Name of alleged victim: _____
 - ☐ Name of alleged wrongdoer: _____
 - ☐ Names of possible witnesses: _____

- ☐ Review applicable board policies, regulations, and practices.
- ☐ Set forth applicable timelines for conducting the investigation and issuing a report.

- ☐ The investigator should be in a position of authority so that serious consideration will be given to the investigation report.
- ☐ Conduct all interviews in a private setting/room.

¹⁷This form may be used to investigate allegations of wrongdoing, including harassment, bullying, or other allegations. This form is provided solely for assistance in the interview process. It is not intended to provide legal advice or to be all-inclusive of all circumstances.

II. Interview the alleged victim

- ☐ If the alleged victim wishes, allow a support person of his/her choice to be present during the interview.
- ☐ It may be appropriate, given the age of the student, or other circumstances, to interview parents, guardians, teachers, or other adults who can provide information regarding the alleged incident and its affect on the student.
- ☐ Explain the investigation process. Indicate that confidentiality will be maintained to the extent possible; consult with legal counsel if you are not confident regarding confidentiality limits. Inform the alleged victim that:
 - ☐ The alleged wrongdoer and any witnesses will also be interviewed;
 - ☐ A written report will be prepared;
 - ☐ The final determination regarding what action, if any, will be taken will be as specified in the district policy.
- ☐ Ask the alleged victim:
 - ☐ Who was involved?
 - ☐ What happened?
 - ☐ Where did it happen?
 - ☐ When did it happen?
 - ☐ Why do you think it happened?
 - ☐ Have the same/similar incidents occurred previously?
 - ☐ How many times has it happened?
 - ☐ What did you do when it happened?
 - ☐ Did you tell anyone about what happened? If yes, who and when?
 - ☐ Did anyone see or hear what happened?

- ☐ Did the alleged victim provoke the alleged wrongdoer?
- ☐ Was there a prior relationship between the parties?
- ☐ Determine how the incident has affected the alleged victim by asking the following questions:
 - ☐ Why did the remarks/actions upset you?
 - ☐ What did you do in response to the remarks/actions?
 - ☐ Did the remarks/actions cause you to change the way you normally act?
 - ☐ Have you missed any school or school events because of the remarks/actions?
 - ☐ How has your schoolwork been affected?
 - ☐ Have you made any changes to your participation/activities at school or school events as a result of the incident?
- ☐ Ask the alleged victim what he/she thinks should be done.
 - ☐ What can be done to help you feel better/safer?

Note: Try to determine if the alleged victim is telling the truth. Remember that the alleged victim may be scared, nervous, hurt, or embarrassed. These feelings can often result in unexpected and inappropriate reactions (i.e., laughing, getting angry, etc.). Lack of perceived credibility of the alleged victim is not grounds to abandon an investigation. The investigation policies and procedures must be followed.
 - ☐ Note the individual's body language.
 - ☐ Does the individual sound believable, or does his/her story sound made-up?
 - ☐ Does the individual have reason to lie?
 - ☐ Does the individual seem reluctant or refuse to relate specifics?

- ☐ Ask the alleged victim to immediately tell someone in authority if the alleged wrongdoer or anyone else confronts him/her regarding the investigation.
- ☐ Ask the alleged victim to write and sign a statement setting forth his or her version of the facts.
- ☐ Instruct the alleged victim to keep everything regarding the interview confidential.
- ☐ Inform the alleged victim of any outside agency that can assist if the complaint is not resolved to the student's satisfaction.
- ☐ Keep notes of the interview process.

III. Interview the alleged wrongdoer *(person alleged to have acted inappropriately)*

- ☐ If the alleged wrongdoer wishes, allow a support person of his/her choice to be present during the interview.
- ☐ Explain that allegations of wrongdoing have been made against the individual and that the purpose of the interview is to investigate the complaint. Tell the alleged wrongdoer that:
 - ☐ The school takes all allegations of wrongdoing seriously, and that such wrongdoing is not tolerated.
 - ☐ Each complaint of wrongdoing is fully investigated.
 - ☐ The interview will give the individual a chance to tell his/her side of the story.
 - ☐ No decision has yet been made as to the truth of the allegations.
- ☐ Explain the investigation process. Indicate that confidentiality will be maintained to the extent possible; consult with legal counsel if you are not confident regarding confidentiality limits. Inform the alleged wrongdoer:
 - ☐ The alleged victim and any witnesses will also be interviewed;
 - ☐ A written report will be prepared;
 - ☐ The final determination regarding what action, if any, will be taken will be as specified in the district policy.

- ☐ Identify the alleged victim and provide the alleged wrongdoer an opportunity to set forth whether he/she has had recent interactions with the alleged victim.
- ☐ Ask the alleged wrongdoer the same questions asked of the alleged victim regarding the incident(s).
- ☐ Determine if the alleged wrongdoer has any witnesses to back up his/her statements.
- ☐ If the alleged wrongdoer denies that the incident occurred, ask if he/she has had any contact with the alleged victim.
- ☐ Ask if the alleged wrongdoer knows why the allegations would have been made against him/her.

Note: Try to determine if the alleged wrongdoer is telling the truth. Remember that the alleged wrongdoer may be scared, nervous, hurt, or embarrassed. These feelings can often result in unexpected and inappropriate reactions (i.e., laughing, getting angry, etc.). Lack of perceived credibility of the alleged wrongdoer is not grounds to abandon an investigation. The investigation policies and procedures must be followed.

- ☐ Ask the alleged wrongdoer to write and sign a statement setting forth his/her version of the facts.
- ☐ Instruct the alleged wrongdoer to keep everything regarding the interview confidential.
- ☐ Inform the alleged wrongdoer that retaliation against the alleged victim or any of the witnesses is prohibited.
- ☐ Keep notes of the interview process.

Note: At this point, the investigator may now have enough information to determine those areas of agreement between the alleged victim's and alleged wrongdoer's versions of the incident. If necessary, additional questions can be asked.

Note: If the investigator has reason to believe that a child under the age of 18 years has been abused, abandoned, or neglected, the investigator must cause a report to be made to law enforcement or Health & Welfare within 24 hours.

IV. Interview the Witnesses

- ☐ If possible, do not reveal the identity of either the alleged victim or alleged wrongdoer to the witness at the beginning of the interview but tell him/her the reason for the interview.
- ☐ Ask broad questions.
- ☐ If the witness does not offer information, ask if he/she saw or heard anything that the witness may feel was harassment.
- ☐ Ask the witness for all information regarding the incident(s) he/she may have.
- ☐ Distinguish between firsthand and secondhand (hearsay) knowledge.
- ☐ Ask each witness to write and sign a statement setting forth his/her version of the facts.
- ☐ Instruct the witness to keep everything regarding the interview confidential.
- ☐ Inform the witness that retaliation against the alleged victim or any of the witnesses is prohibited.
- ☐ Keep notes of the interview process.

V. Evaluating the facts/making a decision

- ☐ Make the written report thorough, objective, and chronological.
 - ☐ Include when and how the investigator first learned of the incident.
 - ☐ Provide a summary of the complaint, and attach all written and signed statements.
 - ☐ List all relevant board, district, and school policies, and all other pertinent school documents reviewed.
 - ☐ Give an overview of each relevant interview, and address credibility of persons interviewed.

- ☐ When possible, distinguish between personal knowledge and hearsay.
- ☐ Set forth documentation and interview information that supports or negates the allegation of wrongdoing.
- ☐ State a conclusion as to whether or not an incidence of wrongdoing occurred.
- ☐ Recommend corrective action, making sure that any disciplinary action recommended is supported by the findings.
- ☐ After a decision has been reached, supply report as directed by policy; follow-up with both the alleged victim and the alleged wrongdoer should be completed as identified in the policy.
- ☐ If disciplinary action will be taken against the alleged wrongdoer, document the action taken, and the due process provided to the individual.
- ☐ Notify the alleged victim of the outcome of the investigation. If disciplinary action is taken against the alleged wrongdoer, that is confidential information and cannot be revealed to the alleged victim without the prior written consent of the alleged wrongdoer.
- ☐ Monitor the situation to be reasonably sure wrongdoing does not resume or continue, and that retaliation does not occur.

VI. Possible Corrective Actions to be Taken *(The following list of possible corrective actions is intended to provide suggestion, is not limiting, and other corrective actions may be appropriate.)*

- ☐ Separate the victim and wrongdoer. Make sure that the victim is not penalized for reporting.
- ☐ Oral or written warnings.
- ☐ Counseling, training, or other education.
- ☐ Suspension.
- ☐ Transfer.
- ☐ Expulsion or termination.

Record of Complaint

_____ School District

☐ First Offense ☐ Second Offense ☐ Other _____

1. Allegations [verbal/written] made against:

Name: _____ **ID#:** _____

School: _____ **Grade:** _____ **Date:** _____

2. Allegation(s): (Use additional paper if necessary)

3. Complaint filed by:

Name: _____ **ID#:** _____

School: _____ **Grade:** _____ **Date:** _____

4. Complaint investigated by:

Name(s): _____

Title(s): _____

5. Results of Investigation: (Use additional paper if necessary)

6. Conclusions and Actions Taken: (Use additional paper if necessary)

Investigator Signature and Title

Date

The constitutional rights of students do not stop at the schoolhouse gates. Therefore, students have a right to be protected from *unreasonable* searches by school officials. However, it is the intent of the board of trustees to provide a safe and orderly environment for all students, conducive to the pursuit of educational goals. As a result, it may be necessary for school officials to search a student, his/her personal belongings, locker, desk, or vehicle, when it is in the interest of the overall welfare of other students or is necessary to preserve the good order and discipline of the school.

Only district personnel authorized by the superintendent may conduct a search pursuant to this policy. This policy applies to only those searches conducted by school officials; it does not apply to searches by law enforcement officers.

DEFINITIONS

“Contraband” means all substances or materials which students are prohibited from possessing by district policy. Examples include, but are not limited to, cell phones, beepers, and articles containing gang symbols.

“Reasonable suspicion” means that the school official initiating the search has a well-founded suspicion—based on objective facts that can be articulated—of either criminal activity or a violation of district policy by a particular student(s). Reasonable suspicion is more than a mere hunch or supposition.

RANDOM SEARCHES

In the interest of maintaining safe and drug-free schools, school officials may conduct random or “blanket” searches of student lockers, student belongings, desks, and the school parking lot. School officials will conduct such searches in a random and systematic manner that is minimally intrusive, and it is not required that reasonable suspicion exist.

The superintendent or designee will develop and implement a “lottery” system by which lockers, desks, student belongings, and vehicles will be randomly selected to be searched. Random searches may be conducted for any reason at any time without notice, without student consent, and without a search warrant. Random searches may involve the use of drug dogs, metal detectors, or surveillance cameras.

REASONABLE SUSPICION SEARCHES

To initiate a reasonable suspicion search, the school official must have a reasonable suspicion as to all of the following:

1. A crime or violation of school policy has been or is being committed;
2. A particular student has committed a crime or violated district policy;
3. Physical evidence of the suspected crime or violation of district policy is likely to exist; and
4. Such physical evidence would likely be found in a particular place associated with the student suspected of committing the crime or district policy violation.

The search based on reasonable suspicion must be reasonable in its scope. The areas or items to be searched and the methods utilized must be reasonably related to finding physical evidence of the crime or violation of district policy. The search must not be excessively intrusive, given the age and gender of the student and the circumstance of the search.

School officials will make a reasonable effort to obtain the consent of a student before initiating a reasonable suspicion search, unless the circumstances constitute an emergency.

STUDENT'S PERSON OR POSSESSIONS

At any time when the student is on school property or at a school-sponsored event, school officials may search the student's person or possessions (backpack, purse, etc.) if the school official has reasonable suspicion to believe that the student is in possession of illegal or contraband materials or is otherwise secreting evidence of a crime or violation of district policy.

Such searches shall be conducted in an appropriate manner, in private and witnessed by another adult. Students may be required to remove outer clothing (jacket, shoes, etc.) and empty pockets as part of the search. If the search is of the student's person ("pat-down" search), the school official conducting the search and the witness must be of the same sex as the student. Under no circumstances is a school official authorized to conduct a "strip search" of a student.

LOCKERS

Lockers assigned to students are the property of the school district and remain under the control of the district at all times. The student will be responsible for the proper care and use of the locker assigned for his or her use. Students are prohibited from using a locker for the storage of illegal, contraband, or potentially harmful items, including, but not limited to, weapons, drugs, and alcohol.

School officials may randomly open and inspect lockers for any reason at any time. If the random search produces evidence of criminal activity or violation of district policy, it may serve as a basis for a reasonable suspicion search of the locker's contents, including the student's property.

School officials may open and inspect lockers when there is reasonable suspicion that the lockers may contain illegal or contraband materials, other evidence of a crime or violation of district policy, or items which may be a threat to safety or security. Searches of lockers, whether random or reasonable suspicion, may be conducted without notice, without consent, and without a search warrant.

AUTOMOBILES

Students are permitted to park on school premises as a matter of privilege, not of right. School officials are authorized to conduct routine patrols of school parking lots, inspecting the exteriors of vehicles parked on school property. The interiors of vehicles on school property may be searched whenever an authorized school official has reasonable suspicion to believe that illegal or contraband materials, other evidence of a crime or violation of district policy, or items which may be a threat to safety or security, are contained inside. Such patrols and searches may be conducted without notice, without consent, and without a search warrant.

USE OF DRUG DOGS

The district may elect to use specially trained drug dogs to alert the dog's handler to the presence of controlled substances, at the discretion of the superintendent or designee. The use of a drug dog shall comply with district policy and applicable law.

The drug dogs will be present for the purpose of detecting controlled substances in lockers, personal items or vehicles on district property only when there are no students or employees present. Only the trained dog's handler will determine what constitutes an alert by the dog.

A drug dog's alert constitutes reasonable suspicion for the district officials to search the lockers, personal items or vehicles. Such a search by district officials may be conducted without notice or consent, and without a search warrant.

SEIZURE OF CONTRABAND OR ILLEGAL MATERIALS

School officials may seize and retain, or turn over to law enforcement officials, any contraband or illegal items, or evidence of a crime or violation of district policy, found as a result of any search conducted pursuant to this policy.

NOTICE

Students and parents/guardians shall be informed of this policy at the beginning of each school year through publication of the policy or an age-appropriate summary in the student handbook.



LEGAL REFERENCE:

Idaho Code Section 18-3302D

New Jersey v. TLO, 469 U.S. 325 (1985)

Tinker v. Des Moines, 393 U.S. 503 (1969)

ADOPTED:

AMENDED:

The superintendent of this district or the principal of any school within this district may temporarily suspend any student for the following reasons:

1. Disciplinary reasons or for any other conduct disruptive of good order or the instructional effectiveness of the school.
2. Failure of the parent/guardian to furnish, or to request of a previous administration, out-of-state records for a student transferring into this district. The parent/guardian of a student transferring from out-of-state to a school in this district is required, if requested, to furnish the district accurate copies of the student's school records, including records containing information concerning violent or disruptive behavior or disciplinary action involving the student.

The temporary suspension by the principal will not exceed five (5) school days in length. The superintendent may extend the temporary suspension an additional ten (10) school days. If the board finds that immediate return to school attendance by the temporarily suspended student would be detrimental to other students' health, welfare, or safety, the board may extend the temporary suspension for an additional five (5) school days.

Prior to suspending any student, the superintendent or principal will grant an informal hearing on the reasons for the suspension and the opportunity to challenge those reasons. Any student who has been suspended may be readmitted to the school by the superintendent or the principal who suspended him or her upon such reasonable conditions as the superintendent or principal may prescribe. The board will be notified of any temporary suspensions, the reasons therefor, and the response, if any, thereto.

Suspension of students with disabilities as defined by Public Law 94-142, and subsequent amendments, and Section 504 of the 1973 Rehabilitation Act, will follow federal guidelines and the provisions of this policy.

**LEGAL REFERENCE:**

Idaho Code Sections

33-205

33-209

Goss v. Lopez, 419 U.S. 565 (1975)

Honig v. Doe, 108 S. Ct. 592 (1988)

ADOPTED:**AMENDED:**

The board may deny a student enrollment, or may deny a student attendance at any of its schools by expulsion, for the following reasons:

1. The student is a habitual truant, is incorrigible, or whose conduct, in the judgment of the board, is such as to be continually disruptive of school discipline or of the instructional effectiveness of the school, or whose presence in a public school is detrimental to the health and safety of other students.
2. The student has been expelled from another school district in this state or any other state.
3. The parent/guardian fails to furnish, or to request of the out-of-state school from which the student is transferring, school records for a student transferring into this district. The parent/guardian of a student transferring from out-of-state to a school in this district is required, if requested, to furnish the district accurate copies of the student's school records, including records containing information concerning violent or disruptive behavior or disciplinary action involving the student.

Any student having been denied enrollment or expelled may be enrolled or readmitted to school by the board upon such reasonable conditions as may be prescribed by the board; but such enrollment or readmission will not prevent the board from subsequently expelling such student for cause.

The board will expel from school for a period of not less than one (1) year, twelve (12) calendar months, or may deny enrollment to, a student who has been found to have carried a weapon or firearm on school property in this state or any other state, except that the board may modify the expulsion or denial of enrollment order on a case-by-case basis. An authorized representative of the board will report such student and incident to the appropriate law enforcement agency.

Discipline of a student with disabilities will be in accordance with the requirements of federal law Part B of the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act (Section 504) as well as the provisions of this policy.

No student will be expelled or denied enrollment without first receiving the following due process rights:

The board, through the superintendent or his or her designee, will give written notice to the parent/guardian of the student;

The notice will state the grounds for the proposed expulsion or denial of enrollment and the time and place where such parent/guardian may appear to contest the action of the board to deny school attendance;

The notice will also state the right of the student to be represented by counsel, to produce witnesses, and submit evidence on his or her own behalf, and to cross-examine any adult witnesses who may appear against him or her.

Within a reasonable period of time following such notification, the board will grant the student and his or her parent/guardian a full and fair hearing on the proposed expulsion or denial of enrollment.

5. The board will allow a reasonable period of time between such notification and the holding of such hearing to allow the student and the parent/guardian to prepare their response to the charge.
6. Any student who is within the age of compulsory attendance, who is expelled or denied enrollment as herein provided, will come under the purview of the Juvenile Corrections Act, and an authorized representative of the board will provide, within five (5) days, written notice of the expulsion to the prosecuting attorney of the county of the student's residence in such form as the court may require under the provisions of the Juvenile Corrections Act.

**LEGAL REFERENCE:**

Idaho Code Sections

33-205

33-209

20-527

ADOPTED:**AMENDED:**

All procedures set forth in the “Student Suspension” policy and the “Student Expulsion” policy will be followed when it is necessary to discipline students with disabilities as defined by the Individuals with Disabilities Education Act (IDEA). The following additional procedures will also be adhered to when disciplining students with disabilities.

DISCIPLINARY ACTIONS

Ten-day disciplinary removal

School personnel may order a disciplinary removal of a student with disabilities for not more than ten (10) consecutive school days per infraction to the extent suspension would apply to students without disabilities. Cumulative suspensions, if over ten (10) school days in a school year must not constitute a significant change in placement.

In determining whether a significant change in placement has occurred, school personnel, *through the multi-disciplinary team process*, will review whether the student is subjected to a series of removals that constitute a pattern of exclusion because they cumulate to more than ten (10) school days in a school year, and because the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another indicate such a pattern of exclusion.

Any time a student is suspended for more than ten (10) school days in a school year the student will be provided services to the extent necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out on his or her IEP, as determined by school personnel, in consultation with the student’s special education teacher *or as determined by the student’s IEP Team*.

Forty-five school day disciplinary removal

1. The Superintendent or designee may order a change in placement of a student with a disability to an appropriate interim alternative educational setting, as determined by the IEP Team. The placement change may occur regardless of whether the behavior is a manifestation of the student’s disability, and may occur for the same amount of time that a student without a disability would be subject to discipline, but for not more than forty-five (45) school days if:
 - a. The student carries or possesses a weapon to or at school, on school premises, or to or at a school function. “Weapon” for the purposes of this policy is defined as any weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury. This term does not include a pocketknife with a blade of less than two and one-half (2½) inches in length.

- b. The student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function.
 - c. The student has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function. “Serious bodily injury” for the purposes of this policy is defined as a showing of substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of function of a bodily member, organ, or mental faculty.
2. School personnel may request a change in placement to an appropriate interim alternative educational setting from a hearing officer for not more than forty-five (45) school days if it is determined by personnel that a student with a disability is substantially likely to cause injury to himself or herself, or to others in the current educational placement.
3. School personnel may petition the court for an injunction to remove any student with a disability from school or to change the student’s current educational placement if personnel believe that maintaining the student in the current educational placement is substantially likely to result in injury to the student or to others.

FUNCTIONAL BEHAVIORAL ASSESSMENT/BEHAVIORAL INTERVENTION PLAN

If a student with a disability is removed from his/her current placement to an appropriate interim alternative educational setting for not more than forty-five school days (irrespective of whether the behavior is determined to be a manifestation of the student’s disability) or if school personnel seek to order a change in placement that would exceed ten (10) school days for behavioral violations, and it has been determined that the misbehavior is not a manifestation of the student’s disability, the student shall receive, as appropriate, a functional behavioral assessment, behavioral intervention services, and modifications that are designed to address the behavioral violation so that it does not recur.

Within ten (10) school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, a manifestation determination shall be conducted. In the event it is determined that the student’s conduct was a manifestation of his/her disability, the IEP team shall:

1. Conduct a functional behavioral assessment and implement a behavioral intervention plan for the student, provided such an assessment has not been conducted prior to the manifestation determination;
2. In the situation where a behavioral intervention plan has been developed, review the plan and modify it, as necessary, to address the behavior; and

3. Return the student to the placement from which the student was removed, unless the student has been placed in an appropriate interim alternative educational setting, or the parent and the district agree to a change of placement as part of the modification of the behavioral intervention plan.

MANIFEST DETERMINATION

Within ten (10) school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, the district, the parent, and relevant members of the IEP Team will conduct a manifestation determination. A decision to change the placement of a student for disciplinary reasons may include expulsion in the event the student's behavior is not found to be a manifestation of his/her disability.

EXPULSION

If a student on an Individualized Education Program (IEP) is expelled from school after a manifestation determination has found that the student's behavior was not a manifestation of the student's disability, educational services, consisting of services necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP, will be provided to that student at an alternative setting.



LEGAL REFERENCE:

IDEA Amendments of 2004

20 U.S.C. Chapter 33, Section 1415(k)

34 C.F.R. Part 300

Honig v. Doe, 484 U.S. 686, 108 S. Ct. 592 (1988)

IDAPA 08.02.03.600

Idaho Special Education Manual, September 2001

ADOPTED:

AMENDED:

**Language in text set forth in italics is optional.*

This policy addresses disciplining students with disabilities, as defined by Section 504 of the 1973 Rehabilitation Act. For those students with disabilities under the Individuals with Disabilities Education Act (IDEA), the disciplinary procedures required by the IDEA will be followed. In the event a student has disabilities under both Section 504 and the IDEA, both policies shall be followed in determining appropriate disciplinary actions.

SUSPENSION

A student with a disability, as defined by Section 504 of the 1973 Rehabilitation Act, may be suspended for not more than ten (10) consecutive school days per incident.

Whenever a school considers suspending a student with a disability for more than ten (10) cumulative school days in a school year, a *Multi-Disciplinary Team (MDT)* will be convened to determine if the cumulative suspensions constitute a significant change in placement by reviewing the following factors:

1. The length of each suspension;
2. The proximity of the suspension to one another; and
3. The total amount of time the student is excluded from school.

The *MDT* will consist of individuals who are knowledgeable about the student, the student's school history, the student's individual needs, the evaluation data, and the placement options.

If the *MDT* determines that the exclusion would constitute a significant change in placement, the school will conduct a manifestation determination as set forth below.

EXPULSION

Prior to submitting an expulsion recommendation to the board of trustees for any student with a disability as defined by Section 504 of the 1973 Rehabilitation Act, an *MDT* will make a "manifestation determination." A manifestation determination involves a review of the student's misconduct, the student's disability and the services provided to determine:

1. Is the misconduct a manifestation, or result, of an inappropriate placement or educational program for the student?

2. Is the misconduct a manifestation, or result, of the student's disability?

In reviewing the questions set forth above, the *MDT* will review information regarding the student's disability that is recent enough to afford an understanding of the student's current behavior. In the absence of reasonably current information about the student's disability, the school district will conduct or cause to be conducted additional evaluation(s) regarding the student's disability before making the manifestation determination. If either manifestation determination question answer is "yes," the student will not be expelled. However, the *MDT* may determine that a placement change is necessary for that student.

If the answers to both the questions set forth above are "no," the school may proceed with the recommendation of expulsion to the board in the same manner as for similarly-situated students who do not have disabilities.

If the student's parent/guardian disagree with the *MDT's* determination of the manifestation determination, a hearing may be requested under this district's Section 504 hearing procedure. Although the parent/guardian may disagree with the manifestation determination findings, the student may be expelled after following the proper procedures. Educational services may cease after expulsion.



LEGAL REFERENCE:

Section 504 of the 1973 Rehabilitation Act

29 U.S.C. Ch. 16 Sacs 706(8) and 794-794b

34 CFR Part 104

Idaho Code Section 33-205

Akron (OH) City School Distr., OCR Letter, 19 IDELR 542 (1992)

Discipline of Students with Disabilities in Elementary and Secondary Schools, OCR, October 1996

ADOPTED:

AMENDED:

**Language in text set forth in italics is optional.*

It is the policy of this district that corporal punishment may be administered only upon a determination that such discipline is appropriate.

In determining whether corporal punishment is appropriate for a particular student, the following factors must be considered:

- a. The need for corporal punishment, given the student's current behavior and prior disciplinary actions.*
- b. The relationship between the need for corporal punishment and the amount of punishment to be administered;*
- c. The extent of injury which could be inflicted as a result of the punishment; and*
- d. A determination that the punishment must be administered in a good faith effort to maintain discipline.*
- e. A determination that other methods of discipline have proven to be ineffective.*

Corporal punishment may not be imposed unless the student has been informed that specific misbehavior could result in corporal punishment.

Corporal punishment may only be administered in the presence of a second school official who has been informed in the presence of the student of the reason for the punishment.

The student's parent/guardian must be informed of the punishment and the reason therefor. A written explanation must be provided upon request. A written statement must be placed in the student's discipline file.

Corporal punishment must not be inflicted on the basis of anger.

Corporal punishment must not be inflicted to enforce an unreasonable rule.

Corporal punishment must not be imposed which, by nature or degree, would reasonably be considered to be excessive.

Corporal punishment must only be administered by the principal or superintendent.

This policy will in no way prohibit a teacher from reasonably defending against a physical attack by a student.



LEGAL REFERENCE:

Ingram v. Wright, 97 S. Ct. 1401 (1977)

Biggs v. Koch, CV 91-0330-E-EJL (D. Idaho 1991)

State Board of Education Statement on Corporal Punishment

ADOPTED:

AMENDED:

**Language in text set forth in italics is optional.*